

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1860.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 29.]

The Committee on Post Offices and Post Roads, to whom was referred the report of the Court of Claims adverse to the claim of Arthur Edwards and others, for compensation for carrying the through mails to and from various ports on Lake Erie during certain periods in the years 1849, 1850, 1851, 1852, and 1853, respectfully report:

The claimants allege that they were the managing owners of the steamboats Arrow, Baltimore, Southerner, John Owen, and Bay City, between the years 1849 and 1853, inclusive; that during that time their boats were employed by the persons having charge of the United States mails to transport the same to and from the following ports on Lake Erie, viz:

On steamer *Arrow*, daily, (Sundays excepted,) both ways, between Sandusky City and Detroit, from the 1st of March to the 1st of December, 1849; also from the 1st of March to the 1st of December, 1850; also from the 1st of March to the 1st of December, 1851; also from the 1st of March to the 1st of December, 1852; and on steamer *Bay State*, from the 1st of March to the 1st of December, 1853.

On steamer *John Owen*, between Toledo and Detroit, daily, from the 31st of March to the 30th of December, 1851; and on steamer *Arrow*, from the 30th of March to the 31st of December, 1853.

On steamer *Southerner*, between Detroit, Michigan, and Cleveland, Ohio, daily, from the 7th of March to the 21st of November, 1850; also from the 19th of March to the 21st of November, 1851. And on steamer *Baltimore*, from the 12th of April to the 21st of November, 1852.

That they transported both the through and local mails during the above-mentioned periods, but have been paid for transporting the local mails only, at the rates allowed under the order of the Postmaster General of 21st March, 1849, instructing the postmasters at different points to "make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each for letters, and half a cent each for newspapers, to be paid at the office to which the letters or newspapers are delivered;" notwithstanding the

through mails were transported at the request of the department officials, with the understanding that the claimants should be compensated therefor. That they applied to the Postmaster General for compensation for said service, but he has refused to make such compensation, although, as the claimants are informed and believe, it has actually been done in several other like cases.

That, whatever may have been the usage, the claimants received and carried said through mail at the request of the postmasters and special agents of the department, and have faithfully transported the same during the time above specified, and the government, having derived the benefits and advantages of such transportation, are bound to pay a reasonable and fair compensation therefor.

There is no doubt the alleged service was performed, as claimed, with the sanction of the Post Office Department and under the express orders of its officials. The proof is abundant and conclusive.

It is also clear and indisputable that the claimants have received no compensation for transporting said local and through mail beyond what was allowed for carrying the local mail alone, and the ground assumed by the department is that the amount allowed for the local mail was understood to be in full for the whole service.

No evidence appears to sustain this assumption of the department. On the contrary, the testimony of the postmasters and special agents upon that point shows that the captains of the claimants' boats uniformly demanded pay for transporting the through mail, as a separate service from the local mail, and of which demands the department was advised at the time.—(See testimony of A. S. Williams, postmaster at Detroit, Daniel M. Haskell, postmaster at Cleveland, and Captain S. J. Atwood, in abstract of testimony hereto annexed.)

The following testimony of A. C. Harris, special agent of the department, is unmistakable and conclusive that the claimants performed said service with the expectation of remuneration, besides what was allowed upon the local mails, and that otherwise they would not have performed it:

"A. C. Harris deposes that from July, 1850, to March, 1853, he was special agent of the Post Office Department, and during that period passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. The captains (of the steamers) often objected to receiving the great through mails, saying that the postmasters (local) refused to pay them anything except for the local mails, and as they got nothing for it, they would not carry it, unless the witness would undertake to see them paid for the service. *He requested them to take the mail aboard, and assured them they would be paid for the service; and, in so doing, he states that he acted under the direction of the Post Office Department.*"

The next question that presents itself is the ground upon which the Court of Claims rejected the claim for compensation for said service, and how far that decision affects the rights of the claimants to an equitable claim upon Congress.

It will be seen from the opinion of the Court of Claims, hereto annexed, that that tribunal declined to report a bill for the benefit of the claimants, because the express contract testified to by A. C. Har-

ris, the special agent of the department above referred to, made by him with the claimants, and authorized, as he swears, by the Post Office Department, does not appear by the testimony to have been expressly authorized by the Postmaster General himself. But the committee are of opinion that when an agent of the Post Office Department testifies that a contract made by him, within the fair scope of his agency, was sanctioned by the Post Office Department, it may fairly be inferred, in the absence of any testimony to the contrary, that it was authorized by the Postmaster General himself, the head of that department.

That the service was performed the court had no doubt, but for any compensation beyond what the claimants received for the local mails "they must depend upon the discretion of Congress."

The *equitable rights* of the claimants to compensation for their services was, therefore, not denied, and the decision of the Court of Claims should not, in the opinion of the committee, prejudice the appeal to Congress for a just remuneration.

That the service which the claimants performed under the assurance and expectation of remuneration was beneficial to the department and useful to the public, and such as would have been incumbent upon the department to supply, aside from the local mail service, there can be no doubt.

It will be seen from the testimony of Mr. Harris (see abstract of testimony annexed) that the captains of the claimants' boats used every means within their power to facilitate the through mails, and that it often occurred that the mail could not be got to the boats on the arrival of the cars by the time of leaving, and in such cases the captains, at his request, delayed starting their boats from a half hour to an hour and a half, until the mails could be put on board. Every accommodation therefore seems to have been extended to the department by the claimants, and no more efficient or regular service could have been performed had they been regular contractors.

In view of all the facts in the case, the committee believe that the claimants are justly entitled to a suitable recompense for their services.

In determining what that recompense should be, it may be proper to consider what proportion the through mails bore to the local, for which the claimants received compensation.

The number of letters and newspapers transported in the through mails could not be ascertained, as the mails were always transferred from the cars to the boats, and from the boats to the cars, without being opened. The only method of approximating to the number is by comparing the number of bags, size, and weight of the through mails with the number of bags, size, and weight of the local mails, as testified to by the different witnesses. The testimony upon that point varies in estimating the through mails to be from four to fifteen times larger than the local mails. One witness testifies that one through mail numbered eighty bags, another witness says he counted 128 bags in one through mail, and another witness swears that one through mail weighed upwards of eight tons. The average of the testimony shows the amount of through mail to be from $6\frac{1}{2}$ to $7\frac{1}{2}$ times greater than the local mail.

The amount paid for carrying the local mail appears to have been a very moderate one, from the fact that it was for letters but one-third of the amount (viz., three cents) to which the department was limited by law.

By computing the number of trips of the claimants' boats, during which they carried the mail, it appears that the average compensation received, (being for the whole time \$10,544 95,) would be less than \$3 75 per passage.

Calculating the through mail to be (at the average of the testimony) seven and five-eighths times larger than the local mail, at the ratio of compensation received, it would amount to \$28 60 per trip, which the committee believe should be paid to the claimants for said service. They report a bill for that purpose and recommend its passage.

The testimony on the subject of the relative amount of through and local mails is perfectly clear and satisfactory.

Full extracts of the testimony accompany this report.

IN THE COURT OF CLAIMS.

ARTHUR EDWARDS, JOHN OWEN, AND IRA DAVIS *vs.* THE UNITED STATES.

Judge BLACKFORD delivered the opinion of the court.

The petition alleges that from 1849 to 1853 the claimants were employed by the persons having in charge the United States mails to transport the mails to and from various ports on Lake Erie, in steamboats, as hereinafter mentioned; that though there was no specific contract on the subject, it was understood that the claimants should receive a reasonable compensation for the service; that the claimants accordingly transported both the local and through mails in their steamboats, daily, as follows: Between Sandusky City and Detroit for certain specified periods in the years 1849, 1850, 1851, 1852, and 1853; between Cleveland and Detroit for certain specified periods in the years 1850, 1851, and 1852; and between Toledo and Detroit for certain specified periods in the years 1851 and 1853; that the claimants have been paid for the said transportation of the local mails, but that the Postmaster General has refused to allow them compensation for carrying the through mails as aforesaid; that those through mails were transported at the request of the agents of the government; and that the claimants are entitled to be paid for such service the sum of fifty thousand dollars.

The documentary evidence is substantially as follows:

By an order of the Postmaster General of the 21st of March, 1849, the postmasters at Cleveland, Sandusky, Toledo, and Detroit, were instructed to make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each per letter, and half a cent each per newspaper, to be paid at the office to which the letters and newspapers were delivered.

On the 6th of May, 1851, the First Assistant Postmaster General wrote to the postmasters at Toledo, Sandusky, and Cleveland, requiring them to report if they were or had been paying captains of steamboats on Lake Erie for letters, packages, and newspapers made up as through mails, as well as for letters, &c., sent to their offices for delivery and distribution; and that if they had been or were then paying for through mails, they were requested to state under what instructions they did so; and, in making their report for 1849 and 1850, to state whether the captains of the boats were paid for through matter, and if so, how did they (the postmasters) go into the count.

To the letter just mentioned the postmasters at Toledo and Cleveland answered that they had only paid for letters, packets, and newspapers sent to their offices for delivery and distribution. The postmaster at Sandusky answered that he had paid for through mails, but he does not state how much he had paid, nor does he refer to any instructions authorizing such payment.

Under an order of the Postmaster General of the 7th of June, 1851, the postmasters at Sandusky and Toledo were instructed that, under the order of the 21st of March, 1849, they would pay the one cent on letters and half a cent on papers for such letters and papers as were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. And, at the same time, the postmaster at Cleveland was instructed that, as a contract for carrying the mail between his office and Buffalo, New York, had been made, the order of the 21st of March, 1849, was rescinded, except in cases of boats delivering mails from Detroit and Toledo; the boats so delivering to be paid for no through matter.

Also, on the 7th of June, 1851, the First Assistant Postmaster General instructed the postmaster at Cleveland that, under the order of the 21st of March, 1849, he would thereafter pay the boats conveying the mails from Detroit, and all other points except from offices where there was a contract existing for the service, one cent for each letter and half a cent for each newspaper, which were for delivery at his office only; and that he would also pay one cent for each package of letters, and one-half cent for every package or bundle of newspapers for other offices, that is, such offices for which the matter is separated and assorted at his office.

There are several depositions taken, which are substantially as follows:

L. W. Beebe. He was deputy mail agent and messenger of the Post Office Department at Detroit, from 1849 to 1855, and attended to the receipt and delivery of the mails. He separated the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, delivering such local mails to the Detroit post office, and sending the through mails on, by cars and boats, towards their destination. The through mail was, on an average, five or six times larger than the local mail.

The Southerner commenced running in the fall of 1849, and continued running until the close of navigation, between Detroit and Cleveland. She commenced running again in the spring of 1850 with

the Baltimore, the two boats making daily trips between Detroit and Cleveland. They were both owned by Arthur Edwards, and carried the mail daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route in connection with the St. Louis, going down one day and back the next. The St. Louis was owned by Captain Ward, and the Southerner by Arthur Edwards.

On the Sandusky and Detroit route, the Arrow, owned by Arthur Edwards, made daily trips in 1849, 1850, 1851, 1852, and part of 1853, when the Bay City took her place.

On the Toledo and Detroit route, the John Owen ran in the forepart of 1849, the whole of 1850, 1851, and 1852, and part of 1853, when her place was taken by the Arrow. During this time she carried the mails every other day, and was owned by Arthur Edwards. The boats on the Toledo line did not carry the mails all this time, but only during a portion of the years above mentioned. He was not positive as to the time.

A. C. Harris. From July, 1850, to March, 1853, he was a special agent of the Post Office Department, and, during that period, passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. He thinks that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such office.

On the Cleveland and Detroit route, the mails were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City, on the Sandusky and Detroit route, during his agency; between Toledo and Detroit, by the Arrow and Owen. The mails were put on the boats running over said routes by directions of the postmasters generally, and sometimes by the witness' direction. The captains often objected to receiving the great through mail, saying that the postmasters refused to pay them anything except for the local mails; and as (they) got nothing for it they would not carry it, unless the witness would undertake to see them paid. He requested them to take the mail aboard, and assured them that they would be paid for the service; and in so doing he states that he acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of cars by the time of leaving. In such cases the witness often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half an hour to an hour and a half.

D. D. Beebe. He was clerk in the Cleveland post office in 1852, and thinks that the through mail carried on the steamers in that year was at least twenty times larger than the local mail.

James Welch. He was a clerk in the Cleveland post office in 1851 and 1852. The mails in those years were carried between Cleveland and Detroit by steamboats daily. The mail going east during those years consisted mainly of the through mails destined for Pittsburg, Baltimore, Washington, Columbus, and Cincinnati; and going west,

of matter from those and other offices going to Chicago and other offices west; together with the local mail between Detroit and Cleveland post offices. He thinks it safe to say that the through mail carried over this route was, on an average, ten times as large as the local mail. He was in the habit of handling the mail in delivering it to the mail carrier, and in separating it on its arrival for opening the local mail for delivery.

L. A. Pierce. He was, in 1850 and 1851, master of the steamboat Southerner, running between Cleveland and Detroit. He ran the boat from the 17th of March, 1850, till the 2d of November following; and from the 19th of March, 1851, to the 20th of November following, carrying daily the through and local mails the two seasons. The local mail was made up here (Cleveland) and destined for Detroit, and *vice versa*. The through mail was destined for points beyond Detroit on one side, and Cleveland on the other. He thinks the through mail would average from six to eight times as much as the local mail, and that there were from eight to ten bags of through mail per day. Of the local mail, there was one bag of letters and one bag of papers. He received for carrying the mail about two hundred dollars for each season, and that for the local mail only.

P. Farley. During the seasons of navigation in 1850 and 1851 he carried the mail from the boats to the post office, and from the post office to the boats, daily; and thinks the mail was carried in those years on the steamboats Southerner and Baltimore, from Cleveland to Detroit, and from Detroit to Cleveland. He thinks that the local mail was not more than one-fourth as large as the through mail. The local mail was that which stopped at Cleveland and Detroit; the through mail was that which was destined for points beyond Cleveland on one side, and beyond Detroit on the other.

J. Nelson. During the lake navigation in 1851 and 1853 he was mail carrier at Toledo, and carried the mails from the cars and steamboats to the post office, and from the post office to the cars and boats. In 1851 the line between Toledo and Detroit was formed by the John Owen and the John Hallister, and in 1853 by the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next; and for a short time in 1853 they made the trip both ways in one day. He thinks that the through mail in those years, when carried on the boats, was four times as large as the local.

T. F. Brodhead. He was postmaster at Detroit from the 1st of July, 1853, to the time of making his deposition. The steamer Bay City carried the mail between Detroit and Sandusky from said 1st of July to the 31st of December following. The mail from Toledo to Detroit was carried, for the same time, by the steamer Arrow, and it was understood that, at that time, those boats were owned by the claimants. *For the transportation of the local mail on those steamers he usually paid the captains of the boats. The amount paid for said time was \$354 88. Between Sandusky and Detroit the through and local mails were about the same. Between Detroit and Cleveland the through mail, or mail for points beyond Cleveland, was four times greater than the local mail. Between Cleveland and Detroit the through mail was one-fourth as large as the local mail. The mail service of said boats was satisfactorily performed. He paid for delivery

of local mail at Detroit post office at the rate of one cent per letter, and one half cent for each newspaper. He also paid for packages received and going beyond his office one cent for each package, amounting to fifteen dollars and fifty-three cents for the two quarters ending the 31st of December, 1853.

S. F. Atwood. He was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners. Between Detroit and Sandusky, and occasionally between Detroit and Cleveland, the Arrow generally ran; and the Bay City did the same in 1853. Before navigation opened to Buffalo, the witness used to run as far as the ice would permit beyond Cleveland. Whilst master of said boats he carried the through and local mail. In said years, except 1853, he carried the through eastern mail before navigation opened to Buffalo, and generally made from three to seven trips, each time carrying the mail both ways, for which no compensation was received, except for delivery of the local mail at Detroit, and sometimes at Cleveland. The largest through mail, for which he received no compensation, was eighty full-sized leather and canvas bags. The through mail, as near as he could estimate it, was three-fourths or four-fifths of the mail carried. The claimants were the managing owners of the boats Arrow and Bay City. He supposed that the carrying of the through mail on the Southern Michigan railroad commenced in 1853, as there was then a diminution of the through mail by steamboats. He often asked compensation for carrying the through mail, but never received it. The claimants did not receive it, for the captains of the boats only were authorized to receive and receipt for it.

L. W. Martin. He was clerk and steward of the steamboat Southerner in 1850, 1851, and 1852. That boat ran between Detroit and Cleveland in 1850 and 1851, and between Cleveland and Toledo in 1852. Whilst he was on that boat, she carried the through and local mails. The through mail was four or five times larger than the local mail. The boat carried the through mail, for which no compensation was received, to points below Cleveland before navigation was open to Buffalo. She made from three to six trips to such points. He said he could not state particularly the average amount of through mail carried generally, but one mail numbered one hundred and twenty-eight bags.

A. S. Williams. He was postmaster at Detroit in April, 1849, and until July 1, 1853. The Arrow, Bay City, Southerner, and the other boats mentioned in the claimants' petition, carried the mail from Detroit to the points named in the petition. They carried the through as well as the local mails. In May and September, 1849, he wrote to the Post Office Department, at Washington, advising it of claims made by steamboat captains, generally for compensation for carrying the through mails, expressing the opinion that the quantity of through mail was more than double that of the local mail delivered for distribution there, and saying that he thought his estimate would fall far short of the facts. The through mail increased very much from that time till the fall of 1852. He thought the through mail in 1850, 1851, and 1852, was from three to four times greater than the

local mail. The through mail embraced everything west of that State. He never paid anything for the transportation of the through mail by packet. He acted under the instructions in the office to his predecessor, dated March 26, 1849.

G. D. Baptiste. In 1849, 1851, and 1852, he was on the steamboats Arrow and Southerner together at different times. He was on the Southerner in 1849 and 1852, and on the Baltimore in 1851. Part of his duty was to take care of the mail bags on those boats. The through mail, while he was on the boats, was, at a low estimate, five times larger than the local mail. They once carried a mail, taken on at Erie and left at Toledo, which they estimated at about eight tons.

Lewis Allen. He was assistant postmaster at Detroit from the 1st of May, 1849, to the 1st of October, 1853. From his knowledge there of mails for Chicago and points west, he thought the through mails, brought by the steamboats, were three times larger than the local mail. The steamboats frequently brought through mails as well as local mails.

Daniel P. Bushnell. He was collector of customs at Detroit. Arthur Edwards had been managing owner of the Southerner from 1849. The Bay City was under the managing ownership of Ira Davis and John Owen, or Owen and Davis, from 1852. The Arrow had been in the name of Owen and Davis from 1850 to 1853, inclusive. The Baltimore was registered in 1851 in the name of Howard and Bronson. The John Owen was registered in 1845, and owned by Arthur Edwards and Ira Davis from 1845 to 1853, inclusive. The Southerner ran between Detroit and Cleveland; the Arrow between Detroit and Sandusky; the Baltimore between Detroit and Cleveland; the Bay City between Detroit and Sandusky; the John Owen ran between Detroit and Toledo in 1849, 1850, 1851, 1852, and 1853.

L. W. Martin. The claimants had the control of the steamers Baltimore, Arrow, Southerner, John Owen, and Bay City, from 1849 and 1853, inclusive, during such time as said boats were running, and were entitled to receive compensation for such service. The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852, inclusive. The Southerner was owned and controlled by Arthur Edwards, and ran from Detroit and Buffalo, touching at intermediate ports; from Detroit to Cleveland in 1850 and 1851; between Cleveland and Toledo in 1852. The Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland. The Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran from 1849 to 1852 between Detroit and Sandusky, and in 1853 between Detroit and Toledo. The Bay City was owned by Davis and Owen and Ward (Davis and Owen being the managing owners) in 1853, and ran between Detroit and Sandusky. The said boats carried the through and local mails between the different ports stated in said years during the season of navigation.

H. G. Voice. He was captain of the Baltimore, running between Detroit and Cleveland during the navigation season of 1851, and carried the mail on that boat during that year on every trip. When

there were six or eight bags of mail, he thought that not more than two of them would be the local mail.

S. F. Atwood. The Arrow and Bay City, mentioned in his previous deposition, commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and ran till the ice stopped them in the fall, which was, on the average, about the 20th of December. They made daily trips over the route (between Sandusky and Detroit) twice each day down, and back every day, except Sunday, and except, also, from four to nine trips early in the spring, when they run to Erie and Buffalo. The mail was carried every day twice over the route, or daily both ways during the season of navigation of those years, (1849 to 1853.)

H. G. Voice. The mails, mentioned in his previous deposition, going west, consisted of those destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east. The mails destined to and marked for Detroit and Cleveland, at each end of the route, he understood as local mails, and those going to points beyond those offices as through mails. In speaking of the bags in his previous deposition, he meant to express the proportion of the local and through mails. The through mail was four times larger than the local mail.

A. S. Johnson. In 1851 he was clerk of the Baltimore. She carried the mail between Detroit and Cleveland daily, commencing at the opening of navigation in the spring, and running till the close of navigation in the fall. He had the general supervision of the mail when brought aboard, and saw it locked up, and, at the end of the route, properly delivered to the agent, who carried it to the post office. His recollection of it was, that the through mails destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

Daniel M. Haskell. He was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853, and attended personally to the duties of the office during said time. The mail was carried between his office and Detroit by the steamers Baltimore and Southerner during 1850, and by the Southerner and St. Louis during 1851. During those years the mail was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail between his office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukie, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, Washington, and the country south and east of Cleveland. The local mail was but a small proportion of the whole mail carried. From his recollection of it, he should say it was not more than one-tenth of the whole bulk of mail passing over this route. His attention was frequently called to it by the captains of the boats calling on him for pay for the through mail, insisting that it was eight or ten times as much as what they got pay for. He did not pay them for carrying the through mail or any part of it. He paid for carrying the local mail between Cleve-

land and Detroit at the rate of one cent for letters, and half a cent for papers delivered at his office, to the captains of the boats so bringing such mails. He had no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter and half a cent for a newspaper, which he thinks was a reasonable price; and he thinks it was worth the same price to carry the through mail as the local, according to its relative proportion. The boats above mentioned formed a line between Detroit and Cleveland, running in connection with the railroads at those points, being the only boats on that line during said two years. He sent both the local and through mails over that route by said boats by the instructions of the Post Office Department.

The facts and the law of this case are, in our opinion, as follows:

On the 21st of March, 1849, the Postmaster General instructed the postmasters at the places mentioned in the petition "to make up and forward mails daily between their respective offices in boats," at one cent a letter and half a cent a newspaper, payable where the letters and papers were delivered; and on the 7th of June, 1851, he instructed the postmasters at Sandusky and Toledo to pay the one cent on letters and half cent on papers which were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. In consequence of those instructions, the claimants carried both the through and local mails in steamboats over the routes, and during the periods mentioned in the petition; the through mails being much larger than the local mails. A report from the Post Office Department shows that the claimants were paid by the postmasters at Detroit, Cleveland, Sandusky, Toledo, and Monroe, 10,544 dollars and 95 cents for mail service in the years mentioned in the petition, under said instructions of March 21, 1849, and June 7, 1851, allowing one cent for each letter and half a cent for each newspaper. The claimants applied, in 1854, to the Post Office Department for an additional compensation of 25,180 dollars, but the application was refused. They have now applied to this court for additional compensation, and have increased the demand so as to make it 50,000 dollars.

We have no doubt but that the promises made by the Postmaster General by the said orders of 1849 and 1851 for carrying the mails, whether through or local, or both, have been complied with. For the mails to be sent by the boats, and which were so sent, under said orders, the exact price was fixed by those orders, and the same has been regularly paid. Now, did the Postmaster General make any other contract with the claimants, or authorize any other to be made with them, than those expressed in said orders? It is not proved to our satisfaction that he did. It is true there is a witness, Mr. Harris, a special mail agent, who says that the steamboat captains often objected to receive the through mails, saying that the postmasters refused to pay them except for the local mail; that he requested them to take the mail, assuring them that they would be paid; and he says that, in doing so, he acted under the directions of the Post Office Department. The witness does not state the time when this conversation with the captains took place, nor does he set out the directions under

which he says he acted. Neither does he say that the directions were given by the Postmaster General; he only says that they were of the Post Office Department. In all this there is too much uncertainty to satisfy us that the Postmaster General gave to the captains, through Mr. Harris, the assurance in question.

This assurance, given by Mr. Harris, was for a *quantum meruit*; that is, not for any particular price, but for what the service of carrying the through mails should be worth. The claimants have referred to an act of Congress that contemplates the giving of such an assurance by the Postmaster General. The 5th section of the act of March 3, 1825, authorizes the Postmaster General to have the mail carried in any steamboat * * * on such terms and conditions as shall be considered expedient; provided, that he does not pay more than three cents for each letter, and more than one half cent for each newspaper conveyed in such mail.—(4 Stat. at Large, 103.) The 14th section of the act of March 3, 1845, authorizes the Postmaster General to contract with the owners or commanders of any steamboat * * * for the transportation of the mail for any length of time or number of trips less than the time for which contracts for transporting the mail of the United States were then usually made under existing laws, and without the previous advertisements then required before entering into such contracts, whenever, in his opinion, the public interest and convenience would be promoted thereby; provided, that the price to be paid for such service should in no case be greater than the average rate paid for such service under the last preceding or then existing regular contract for transporting the mail upon the route he may so for a less time contract for the transportation of the mail upon.—(5 Stat. at Large, 737.) Those provisions have reference to contracts for a specific price, and not to general promises for what the service might be worth.

We have a report relative to this claim, furnished by Mr. Dundas, Second Assistant Postmaster General, in whose office the contracts and directions of the Postmaster General for the transportation of the mails are entered; and we think that report of itself shows that the Postmaster General gave no other directions respecting said transportation of the mails than the orders aforesaid of 1849 and 1851.

We cannot, therefore, say that Mr. Harris' testimony shows any engagement by the Postmaster General upon which the claimants can found this additional claim of 50,000 dollars.

The said report of the Second Assistant Postmaster General, among other things, says:

“During the years 1849, and 1850, and 1851, there were no regular steamboat contracts between Detroit, Cleveland, Toledo, and Sandusky. There were daily land routes which were intended for the great mails, though they appear to have been irregular, and not at all times sufficient for the service. A regular boat line commenced May 19, 1852, between Cleveland and Buffalo, and Buffalo and Detroit, (north shore,) which, no doubt, conveyed the through mails. The boats of Captain Edwards were only employed in common with many others, not under contract, for auxiliary service, under the general instructions to postmasters to employ them and pay one cent a letter and half

a cent a newspaper, estimated on what are called local mails; which pay was to be in full for all mails, as well through as local. The whole number of boats thus employed during the period embraced in the present claim appears to have been eighty-eight, and the aggregate amount paid them \$44,605 21, (including Captain Edwards' boats.) These all conveyed through mails, it is presumed, and all upon the same terms, and compensation they have received must have been regarded, by the department, in full of all their services."

The Postmaster General, Mr. Campbell, in a communication of the 3d of November, 1856, to the assistant solicitor of this court, says:

"In answer to your inquiry as to the practice of the department relative to payments for conveying mails on the lakes, I have to state that, except where regular contracts exist, the pay is adjusted according to the number of letters and papers destined for the port of delivery, constituting the *local mails*, without reference to through mails conveyed at the same time.

"In some cases one cent has been allowed on each *package* of letters *not* for delivery, forming part of the *through* mails; but, with this exception, the parties always understood that the amount allowed for the local mails was to be in full for the *whole* service."

The employment of the claimants for carrying the mails as aforesaid was under the said orders of the Postmaster General of the 21st of March, 1849, and of the 7th of June, 1851; and for the services now sued for, which were performed under that employment, the claimants can be legally entitled to no other compensation than that which those orders authorized. That compensation has been paid to them by the government. They, no doubt, carried in their boats the large through mails, as well as the local mails, during the time the latter were carried by them as aforesaid. But for any compensation for their services beyond what they have received they must depend upon the discretion of Congress.

Our opinion is, that the claimants have no legal cause of action.

Abstract of the testimony in the case of Arthur Edwards et al. vs. The United States.

L. A. PIERCE, captain of the steamer Southerner, testifies as follows:

I was master of the steamer Southerner, running on Lake Erie, between the cities of Cleveland, Ohio, and Detroit, Michigan. I began running said boat as aforesaid the 17th day of March, 1850, and discontinued for the season the 21st day of November following.

The next season I commenced running said boat the 19th day of March, 1851, and discontinued the 20th of November following.

Said boats run daily as aforesaid, carrying the United States mail, through and local, the two seasons. I mean by the local mail, mail which was made up and destined for Detroit, and *vice versa*. By through mail, I mean that which was destined for points and places beyond Detroit on the one side, and Cleveland on the other. I think the through mail would average from six to eight times as much as the local mail. I took care of the mail; it was especially intrusted to my care.

Questions by counsel for the government.

State how many bags of through mail were carried each trip.

Answer. I should judge from eight to ten bags per day.

State how many bags there were of local mail per day.

Answer. There was one bag of letters and one bag of papers.

Question. Did you receive pay for carrying this mail; and if so, how much, and for what portion of it?

Answer. I received about two hundred dollars each season, and that for the local mail only.

PATRICK FARLEY, the mail messenger at Cleveland, testifies as follows:

Question. What was your occupation during the season of navigation of 1850 and 1851?

Answer. I was then carrying the mail between the post office of this city and the boats running on Lake Erie. I superintended the carrying of the mail as aforesaid personally; was myself always present.

Question. How was the mail carried from Cleveland to Detroit, and from Detroit to Cleveland, during the year 1850?

Answer. I think it was carried on the steamers Southerner and Baltimore.

Question. State what boats carried it in 1851.

Answer. I think the same boats.

Question. State in what manner you discharged the duties of mail carrier during those seasons.

Answer. I received the mail on the arrival of the boats and carried it to the post office, and carried the mail from the post office to the boats on their departure, daily, during those two seasons.

Question. State what proportion of the mail carried by these boats was local and what proportion was through mail.

Answer. The greater proportion was through mail. I think the local mail was not more than one-fourth as large as the through mail. By local mail, I mean that which stopped at Cleveland and Detroit; and by through mail, I mean that which is destined to points beyond Cleveland on one side and Detroit on the other.

S. T. ATWOOD says:

I was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners.

The Arrow generally run between Detroit and Sandusky, and occasionally between Detroit and Cleveland, and the Bay City did the same in 1853.

Question. Did you, while master of these boats, carry the through and local mail?

Answer. I did.

Question. Did you carry the through eastern mail before navigation opened to Buffalo during the years mentioned; and if so, how many trips did you usually make?

Answer. I did in each year, except in 1853, and generally made from three to seven trips each time, carrying the mail both ways, for which no compensation was received, except for delivery of local mail at Detroit, and sometimes at Cleveland.

Question. What was the largest mail you carried of through mail for which you received no compensation?

Answer. Eighty bags; the bags were full-sized leather and canvas bags. The through mail was three-fourths or four-fifths of the mail carried.

Question. Did you receive any compensation for carrying the through mail, or did the owners?

Answer. I did not; often asked for it, but never received it. The claimants did not; for the captains of the boats were only authorized to receive it and receipt for it.

In his second examination, in answer to the question, What time did these boats commence running in the spring, and what time did they lie up in the fall? he says:

They commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and run until the ice stopped them in the fall, which was, on the average, about the 20th of December.

They made daily trips over the route twice each day—down and back every day except Sunday, and excepting also from four to seven early in the spring, when they run to Erie and Buffalo.

Question. How often was the United States mail carried over this route on the said boats during the period last mentioned.

Answer. It was carried every day twice over the route, or daily both ways, during the season of navigation of those years.

HENRY G. VORCE testifies as follows :

Question. Were you the captain of the steamer Baltimore, running between Detroit and Cleveland during the navigation season of 1851?

Answer. I was.

Question. Did you carry the United States mail on your boat during that year on every trip?

Answer. I did.

In his second examination, in answer to the question, What did this mail consist of? he says :

The mails going west consisted of mails destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east.

The mails destined and marked for Detroit and Cleveland, at each end of the route, I understand as local mail; and mails going to points beyond those offices as through mails.

Question. Can you tell the average number of bags per trip you carried during this season?

Answer. I cannot recollect definitely. I recollect there were frequently as many as twenty bags, or more, and it often occurred there were less; but the average number I cannot state.

Question. How much larger do you mean to be understood was the through mail over this route than the local mail?

Answer. The through mail was four times larger than the local mail.

AUG. S. JOHNSON testifies as follows :

Question. What was your business in the year 1851?

Answer. I was clerk of the steamer Baltimore.

Question. Who had charge of the mails aboard of your boat?

Answer. I considered myself responsible for the proper care of the mail, and did have the general supervision of it; and when it was brought aboard I saw it was locked up, and at the end of the route properly delivered to the agent, who carried it to the post office. I often handled it myself, and saw to its being put into the mail room and locked up when it would hold it all.

Question. Do you remember what proportion of the mail so carried was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried over this route. My recollection of it is, that the through mails, destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

J. R. NELSON, mail messenger at Toledo, testifies as follows :

Question. What was your business during the season of lake navigation in the years 1851 and 1853?

Answer. Carrying the mail to and from the steamboats and post office in 1851; in 1853 I carried the mails to and from steamboats, railroad, and post office. I attended at the cars and steamboats with the necessary means of conveyance to take the mails, as they arrived,

to the post office, and in turn took the mails from the post office to the cars and boats.

Question. In what manner was the mail carried between Toledo and Detroit during the season of lake navigation in the years 1851 and 1853?

Answer. By steamboats. I cannot tell what years particular boats ran. Upon examination I find that the steamers John Owen and John Hollister formed the line in 1851. In 1853 the line was composed of the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next.

Question. What proportion of the mails carried on these boats during these years over this route was local and what through mails?

Answer. It is hard for me to tell how much local mail there was, but I should think the through mail, when carried on these boats, was four times as large as the local.

L. W. BEEBE testifies as follows:

Question. What was your business from September, 1849, to July, 1855, inclusive?

Answer. My occupation was that of baggage-master at the Michigan Central depot at Detroit, and depot mail agent and messenger of the Post Office Department at that city. I carried all the mails that were carried except the mail to Pontiac, and such as went by stages from and to the post office, to and from the cars and steamboats, &c.

Question. In what manner did you attend to said business as deputy mail agent, and perform the duties of said office, during the time last mentioned?

Answer. I generally attended personally upon the arrival and departure of the several boats and cars running to and from Detroit, receiving and delivering said mails personally, and assorting and separating the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, and delivering such local mails to the Detroit post office, and sending the through mails on by cars and boats towards their destination. The local mail for the Detroit post office was delivered immediately to the post office, and the through mails were generally taken directly from boats to cars and from cars to boats.

Question. What proportion of the said mail matter coming to and passing through Detroit was local mail, and what through mail?

Answer. The through mail was five or six times larger than the local mail; that is to say, it was on an average five or six times larger, for at some times it was not so large, but at others a great deal larger.

Question. What boats, carrying the mails, ran between Cleveland and Detroit, Sandusky and Detroit, Toledo and Detroit, from the years 1849 to 1854? How long did each boat run, and who was the reputed owner or owners?

Answer. The Southerner commenced running in the fall of 1849, and continued running until the close of the navigation between Detroit and Cleveland; she commenced running again in the spring of 1850 with the Baltimore. The two boats made daily trips between De-

troit and Cleveland. Both boats were owned by Arthur Edwards, and carried the mails daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route with the St. Louis, going down one day and back the next. The St. Louis was owned by Capt. Ward, and the Southerner by Capt. Edwards. On the Sandusky and Detroit route the Arrow ran, and made daily trips. She was owned by Arthur Edwards. This was during the years 1849, 1850, 1851, and 1852, and part of the year 1853, and which time the steamer Bay City took her place. On the Toledo and Detroit route the John Owen ran in part of 1849, the whole of 1850, 1851, and 1852, and part of 1853. During this time she carried the mails every other day. She was owned by Arthur Edwards. The boats on this line did not carry the mail all of this time, but only during a portion of the years above mentioned; I won't be positive as to the time.

A. C. HARRIS testifies and says: From July, 1850, to March, 1853, I was acting as a special agent of the Post Office Department.

Question. What were the duties of your office?

Answer. Attending to the transportation of the mails, and other duties assigned by the department.

Question. In what districts did your duties require your attention?

Answer. Mainly in Ohio and Michigan.

Question. In attending to the duties of your office, did you often pass over the route from Cleveland to Detroit, Sandusky to Detroit, and Detroit to Toledo, by steamboat, during the period last mentioned, having the mails in charge?

Answer. I did pass very often over those routes during that period, and always gave more or less attention to the mails.

Question. What amount of the mail conveyed over these routes was through mail, and what local mail?

Answer. I think that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth.

Question. What do you understand by the terms through and local mails?

Answer. The local mail is that which is destined to the post office at end of the route, to be opened there. The through mail is that which is destined to points beyond such offices.

Question. How was the mail carried over the above-mentioned routes during the period last mentioned?

Answer. On the Cleveland and Detroit route they were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City on the Sandusky and Detroit route during the time of my service as such agent, between Toledo and Detroit by the Arrow and Owen.

Question. By whose direction were those mails put aboard of the several boats running over the routes above mentioned?

Answer. By the direction of the postmasters generally, and sometimes by my direction.

Question. Under what circumstances, and by what authority, did you direct the mails to be carried by these boats?

Answer. The circumstances were that the captains often objected to receiving the great through mails, saying that the postmasters refused to pay them anything, except for the local mails, and as they got nothing for it they would not carry it, unless I would undertake to see them paid. I requested them to take the mail aboard, and assured them that they would be paid for the service, and in so doing I acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of the cars by the time of leaving. In such cases I often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half hour to an hour and a half.

L. W. MARTIN testifies as follows:

Question. Were you in the employ of the claimants in the years 1850, 1851, and 1852?

Answer. I was.

Question. In what capacity?

Answer. As clerk and steward of the steamer Southerner.

Question. Between what points did the steamboat Southerner run?

Answer. She ran between Detroit and Cleveland in 1850 and 1851, and between Detroit and Toledo in 1852.

Question. Did she carry the through and local mails while you were on the boat?

Answer. She did.

Question. Was it part of your duty to receive and deliver the mails at the points at which the boats touched?

Answer. It was.

Question. What proportion should you think, from your observation, would the through mail bear to the local?

Answer. The through mail was four or five times larger than the local.

Question. Did your boat carry the through mail for which no compensation was received before navigation was open to Buffalo to points below Cleveland?

Answer. She did.

Question. How many trips did she make?

Answer. She made three to six.

Question. What was the average amount of through mail carried generally?

Answer. I can't state particularly, but one mail numbered 128 bags, which I counted myself.

Question. Were the claimants in this suit the managing owners of the Baltimore, Arrow, Southerner, John Owen, and Bay City, between the years 1849 and 1853?

Answer. They had the control of those boats from 1849 to 1853 inclusive, during such time as they were running, and were the persons entitled to receive compensation for such service.

The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852, inclusive.

The steamer Southerner was owned and controlled by Arthur Edwards, and ran from the ports of Detroit and Cleveland in 1850 and 1851.

The steamboat Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland.

The steamboat Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran in 1849 to 1852 between Detroit and Sandusky; in 1853 between Detroit and Toledo.

The Bay City was owned by Davis and Owen, and ran between Detroit and Sandusky in 1853.

Question. Did the aforesaid boats carry the through and local mails between the different ports stated, during the years aforesaid, during the season of navigation?

Answer. They did.

A. S. WILLIAMS testifies as follows:

Question. When were you first in possession of the post office at Detroit, and until when were you postmaster?

Answer. In April, 1849, and until July 1, 1853.

Question. What boats carried the mails from here to the points named in the petition of the claimants?

Answer. The Arrow, Bay City, Southerner, and other boats, mentioned in the petition of claimants.

Question. Did they carry the through mail as well as the local?

Answer. They did.

Question. From your knowledge of the business, what proportion did the through mails bear to the local mails?

Answer. By reference to my letter book I find I wrote the Post Office Department, at Washington, in May, 1849, and September, 1849, advising them of claims made by steamboat captains generally for compensation for carrying through mails, and then expressed the opinion that the through mail was more than double the local mail delivered for distribution here, and that I thought my estimate would fall far short of the facts.

Question. Did the through mail increase much from that time till the fall of 1852?

Answer. It did.

Question. What proportion do you think the through mail bore to the local mail in 1850, 1851, and 1852?

Answer. I should think the through mail was from three to four times greater than the local. The through mail embraced everything of this State.

Question. Did you ever pay for the transportation of the through mail by packet?

Answer. I did not.

Question. At what time did you receive instructions from the department for paying for the mail brought by steamers?

Answer. I found, on taking possession of the office, in April, 1849, instructions to my predecessor, dated March 26, 1849, under which I acted.

GEORGE D. BAPTIST testified as follows:

In the years 1849, 1851, and 1852 I was on the steamboats Arrow and Southerner together at different times; I was on the Southerner in 1849 and 1852; on the Baltimore in 1851.

Question. Was it part of your duty to receive and take care of the mail bags on board of those boats?

Answer. It was.

Question. From your knowledge, what proportion did the through mails bear to the local mails, averaging the whole time you were on these boats?

Answer. At a low estimate the through mail was five times larger than the local mail. We once carried a mail which we estimated at about eight tons; we took it on at Erie and left it at Toledo.

D. D. BEBEE testifies:

In 1852 I resided at Cleveland, Ohio, and was clerk in the Cleveland post office. I think the through mail was at least twenty times larger than the local mail (during the year 1852.) The through mail was much more bulky than the local, and far more trouble to handle.

JAMES WELCH deposes:

I was clerk in the Cleveland post office during the years 1851 and 1852.

Question. What were your duties as such clerk?

Answer. They consisted mainly in distributing the mails and assorting and delivering the same to the mail carrier, who carried the mails between the steamboats and cars and the post office.

Question. How were the mails carried between Cleveland and Detroit during these years?

Answer. By steamboats running daily.

Question. What did the main bulk of the mail carried over that route during those years consist of?

Answer. The mail going east consisted mainly of the through mails, destined for Pittsburg, Baltimore, Washington, Columbus, Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west, together with the local mail between Detroit and Cleveland post offices.

Question. What was the relative amount of local and through mails carried over the said route from Cleveland to Detroit?

Answer. From my recollection of it, I think the through mail, so carried over this route, was in bulk from ten to fifteen times as large as the local mail. I think it safe to say that, on an average, it was ten times as large as the local mail.

Question. What were your means of knowing the relative proportion between the local and through mails?

Answer. I was in the habit of handling the mails with my own hands, in delivering it to the mail carrier and in separating it on its arrival, for opening the local mails for delivery.

DANIEL M. HASKELL deposes:

I was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853.

Question. Did you attend personally to the duties of your office during said time?

Answer. I did. It (the mail) was carried by the steamers Baltimore and Southerner during 1850, and the Southerner and St. Louis during 1851.

Question. How often was the mail carried over this route during these years, and what mail was so carried?

Answer. It was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail, between my office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukee, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, and Washington, and the country south and east of Cleveland.

Question. What proportion of this mail, passing over this route, was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried. From my recollection of it, I should say it was not more than one-tenth of the whole bulk of mail passing over this route. My attention was frequently called to it by the captains of the boats calling on me to pay for the through mail, insisting that it was eight or ten times as much as what they got pay for.

Question. Did you pay them for carrying the through mail, or any part of it?

Answer. I did not. I paid for carrying the local mail between Cleveland and Detroit at the rate of one cent per letter, and half a cent for papers, delivered at my office, to the captains of the boats so bringing such mails.

Question. From your knowledge of the amount of mail passing over this route, what would be a reasonable compensation for carrying the great through mail upon the steamboats over this route?

Answer. I have no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter, and half a cent for a newspaper, which, I think, was a reasonable price; and I think it was worth the same price to carry the through mail as the local, according to its relative proportion.

Question. Did the boats above mentioned run in connection with the railroads terminating at Cleveland and Detroit?

Answer. They did form a line between Detroit and Cleveland, running in connection with the railroads at those points, being the only boats on that line during said two years.

Question. Did you send both the local and through mails over that route by said boats by the instructions of the Post Office Department?

Answer. I did.

